REMARKS

The non-final Office Action mailed November 7, 2008 has been received and reviewed. Claims 1-15 and 18-49 are pending in the subject application. Each of claims 1-3, 6-9, 12-15, 18-20, 23-25, 29, 30, 32-36, 39-44, and 47-49 has been amended as herein above set forth. Care has been exercised to introduce no new matter. Applicants respectfully request reconsideration of the present Application in view of the above amendments and the following remarks.

Rejections based on 35 U.S.C. § 101

Claims 1-15 and 18-33 have been rejected under 35 U.S.C. § 101 as the claimed invention is stated to be directed to non-statutory subject matter. More particularly, each of claims 1-15, 31 and 32 has been rejected under 35 U.S.C. § 101 as the steps in the claims are not "tied to another statutory class of invention (such as a particular apparatus)." *Office Action* at page 2. Independent claim 1 has been amended herein to recite, in part, "utilizing a first computing process, generating a set of target market segment arrays . . ." and "incrementing a numerical identifier in the one or more of the plurality of array elements included in the target market segment array . . . utilizing a second computing process . . . wherein the first and second computing processes are performed by one or more computing devices" (emphasis added). As such, it is respectfully submitted that the invention of claim 1 is tied to a particular apparatus, namely "one or more computing devices." Accordingly, it is respectfully submitted that independent claim 1, as amended, overcomes the 35 U.S.C. § 101 rejection. Each of claims 2-15, 31 and 32 depends, either directly or indirectly, from amended independent claim 1. As such, it is respectfully submitted that the 35 U.S.C. §101 rejection of these claims has been

overcome as well for at least the above-stated reasons. Accordingly, Applicants respectfully request the 35 U.S.C. § 101 rejections of claims 1-15, 31 and 32 be withdrawn.

With respect to claims 18-30 and 33, the claims are stated to be "claiming functional descriptive material (i.e., software) as 'payload manager' is defined as software." *Office Action* at page 3. Independent claim 18 has been amended herein to recite that the payload manager is "residing on at least one computing device, ..." As such, it is respectfully submitted that the "payload manager" is not directed to software per se. Accordingly, it is respectfully submitted that independent claim 18, as amended, overcomes the 35 U.S.C. § 101 rejection thereof. Each of claims 19-30 and 33 depends, either directly or indirectly, from amended independent claim 18. As such, it is respectfully submitted that the 35 U.S.C. §101 rejection of these claims has been overcome as well for at least the above-stated reasons. Accordingly, Applicants respectfully request the 35 U.S.C. § 101 rejections of claims 18-30 and 33 be withdrawn.

Rejections based on 35 U.S.C. § 112

Claims 18-30 and 33 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More particularly, it is alleged that the rejected claims are not system claims. It is respectfully submitted that independent claim 18, as amended herein, recites, in part, "a payload processor . . ." and "a payload manager residing on at least one computing device, ..." As such, it is respectfully submitted that independent claim 18 is clearly a system claim. Accordingly, it is respectfully submitted that independent claim 18, as amended, overcomes the 35 U.S.C. §112, second paragraph, rejection thereof. Each of claims 19-30 and 33 depends, either directly or indirectly, from amended independent claim 18. As such, it is

respectfully submitted that the 35 U.S.C. §112, second paragraph, rejection of these claims has been overcome as well for at least the above-stated reasons. Accordingly, Applicants respectfully request the 35 U.S.C. § 101 rejections of claims 18-30 and 33 be withdrawn.

Rejections based on 35 U.S.C. § 102(e)

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdeggal Brothers v. Union Oil co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 2 USPQ 2d 1913, 1920 (Fed. Cir. 1989). *See also*, MPEP § 2131.

Claims 1, 2, 8, 9, 13-15, 18-20, 24, 25, 31-36, 40-43 and 49 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 2002/0042821 to Muret, (hereinafter "Muret"). As Muret fails to describe, either expressly or inherently, each and every element as set forth in the rejected claims, Applicants respectfully traverse this rejection, as hereinafter set forth.

Independent claim 1, as amended herein, recites a method for processing advertisement requests. The method comprises obtaining a set of advertisement target market segment criteria from an advertiser for delivering at least one advertisement, the set of advertisement target market segment criteria including one or more advertisement target market segment criterion. The method further comprises utilizing a first computing process to generate a set of target market segment arrays having a target market segment array corresponding to each advertisement target market segment criterion in the set of advertisement target market segment criteria, wherein each target market segment array in the set of target market segment arrays

includes a plurality of array elements corresponding to periods of time. Still further, the method includes obtaining a request for an advertisement from one of a user and a content provider, the advertisement request including one or more target market data elements, wherein the advertisement request is associated with a time. Upon determining that at least one of the target market data elements corresponds to a particular advertisement target market segment criterion obtained from the advertiser, the method further comprises incrementing a numerical identifier in the one or more of the plurality of array elements included in the target market segment array that corresponds to the particular advertisement target market segment criterion utilizing a second computing process, the numerical identifier corresponding to the time associated with the advertisement request. The first and second computing processes are recited to be performed by one or more computing devices.

In contrast, Muret discloses a system of evaluating log files related to domains to determine one or more correlations between money generated at a website and "keywords, banner ads, search engines referrals, domains, countries, browsers, platforms or any other parameter of interest." *Muret*, ¶ [0252]. Paragraph [0252] of Muret is relied upon for disclosing "obtaining asset of criteria for delivering at least one payload, the set of criteria including one or more criterion." *Office Action* at page 4. This element of independent claim 1 has been amended herein to recite, in part, "obtaining a set of advertisement target market segment criteria from an advertiser for delivering at least one advertisement . . .." As utilized in the subject application, "advertisement target market segment criteria" are stated to "define an available market for potential advertisements such as the gender and age of the user . . .." *Specification* at p. 17, ll. 17-19. Thus, the "advertisement target market segment criteria" are provided by an advertiser and represent criteria the advertiser would like to have matched up with target market data elements obtained upon receipt of an advertisement request to have the associated

advertisement displayed. Stated differently, the advertisement target market segment criteria are not obtained based upon characteristics of actual web traffic but rather are criteria that represent desired characteristics of web users to whom the associated advertisement will preferably be displayed. Further, as recited in amended independent claim 1, the advertisement target market segment criteria are utilized as a comparison point against target market data elements associated with an obtained advertisement request to collect data points for subsequent inventory processing.

By way of contrast, in the context of "E-commerce Visitor Correlation," Muret discloses that "a special correlation between the e-commerce transaction data in the e-commerce log file 580 and normal website visitor traffic data in the standard log files 510" is performed. It is these correlations that are then referred to as being capable of being utilized to correlate "money to keywords, banner ads, search engines, referrals, domains, countries, browsers, platforms, or any other parameter of interest." *Muret*, ¶¶ [[0243], [0244], and [0252]. Thus, the correlations referred to in Muret are based upon user/visitor web traffic and not upon "advertisement target market segment criteria" obtained from an advertiser, as recited in amended independent claim 1. There is simply no disclosure in Muret of "obtaining a set of advertisement target market segment criteria from an advertiser" and ultimately utilizing the advertisement target market criteria as a comparison point for target market data elements, that is, the data associated with an advertisement request that is required to be present to select an advertisement for display, as recited in amended independent claim 1. *See Specification* at p. 16, ll. 26-28.

Additionally, in the Office Action, it appears as though the "parameters of interest" are being equated to the "set of criteria for delivering at least one payload." *Office Action* at page 4. As previously stated, this recitation of claim 1 has been amended herein to

recite "a set of advertisement target market segment criteria." If Muret were to teach each and every element set forth in amended claim 1, it would be necessary for Muret to teach not only "a set of advertisement target market segment criteria," (which, as previously set forth, it does not) but also "generating *a set of target market segment arrays* having target market segment array *corresponding to each advertisement target market segment criterion* in the set of advertisement target market segment criteria . . .." However, this is not the case. Muret describes at paragraph [0055] a "log engine 200" that "reads each line in each of the log files 510 and separates each line into its individual parts, . . . such as IP address, timestamp, bytes sent, status code, etc." Muret does not describe in paragraph [0055] or elsewhere that the log files (which appear to be equated in the Office Action to arrays) correspond in any way to the parameters of interest later described in Muret at paragraph [0252] as correlated with money.

Further, Muret fails to disclose "*generating a set of target market segment arrays* having a target market segment array corresponding to each advertisement target market segment criterion in the set of advertisement target market segment criteria," as recited in amended independent claim 1. As previously set forth, Muret discloses a system of evaluating log files related to domains to determine one or more correlations between money generated at a website and "keywords, banner ads, search engines referrals, domains, countries, browsers, platforms or any other parameter of interest." *Muret*, ¶ [0252]. In the Office Action, it appears as though the "parameters of interest" are being equated to the "advertisement target market segment criteria" recited in the first step of claim 1. As previously stated, Muret fails to describe "obtaining a set of advertisement market criteria." However, even assuming *arguendo* that the "parameters of interest" of Muret may be equated to the "advertisement target market criteria" of claim 1, and Applicants do not concede that they may, Muret fails to disclose "*generating a set of target market segment arrays* having a target market segment array corresponding to each

advertisement target market segment criterion in the set of advertisement target market segment criteria," as recited in amended independent claim 1. As noted above, paragraph [0055] of Muret describes "a log engine 200" that "reads each line in each of the log files 510 and separates each line into its individual parts, . . . such as the IP address, timestamp, bytes sent, status code, etc." Such log files are being equated in the Office Action to the target market segment arrays recited in claim 1. It is respectfully submitted that contrary to the assertion in the Office Action, those skilled in the art will appreciate that a log file is not the same as a target market segment array. In addition, separating each line in a log file into its individual parts is not the same as generating a set of target market segment arrays corresponding to each criterion in the set of advertisement target market segment criteria, especially if the advertisement target market segment criteria are equated, as they appear to be in the Office Action, to parameters of interest, such as keywords, banner ads, etc. As noted above, Muret simply does not disclose any correspondence between these parameters of interest and the lines of the log file or the individual parts of the lines.

For at least the above-cited reasons, it is respectfully submitted that Muret fails to describe each and every element as set forth in amended independent claim 1. Accordingly, Muret fails to anticipate this claim. As such, Applicants respectfully submit that claim 1, as amended, overcomes the 35 U.S.C. § 102(e) rejection thereof. Accordingly, Applicants respectfully request the 35 U.S.C. § 102(e) rejection of claim 1 be withdrawn. Each of dependent claims 2, 8, 9, 13-15, 31 and 23 depends, either directly or indirectly, from amended independent claim 1 and, accordingly, it is respectfully submitted that these claims are not anticipated by Muret for at least the above-cited reasons. As such, withdrawal of the 35 U.S.C. § 102(e) rejection of these claims is respectfully requested as well. Each of claims 1, 2, 8, 9, 13-15, 31 and 32 is believed to be in condition for allowance and such favorable action is respectfully requested.

Independent claim 18, as amended herein, recites a computerized system for processing advertisement requests, the advertisement requests each being associated with a set of one or more target market data elements. The system includes a payload processor operable to obtain a set of advertisement target market segment criteria and generate a set of target market segment arrays having a target market segment array corresponding to each advertisement target market segment criterion in the set of advertisement target market segment criteria, wherein each target market segment array in the set of target market segment arrays includes a plurality of array elements corresponding to periods of' time. The payload processor is further operable to obtain an advertisement request from one of a user and a content provider, the advertisement request including one or more target market data elements, and increment a numerical identifier in the plurality of array elements corresponding to a time associated with the advertisement request. The system further includes a payload manager residing on at least one computing device, that is operable to evaluate the set of advertisement target market segment criteria using the set of target market segment arrays and to process data within the set of target market segment arrays.

As previously set forth, Muret discloses a system of evaluating log files related to domains to determine one or more correlations between money generated at a website and "keywords, banner ads, search engines referrals, domains, countries, browsers, platforms or any other parameter of interest." *Muret*, ¶ [0252]. With reference to the above discussion of amended independent claim 1, it is respectfully submitted that Muret fails to describe "a payload processor operable to obtain a set of advertisement target market segment criteria and generate a set of target market segment arrays having a target market segment array corresponding to each advertisement target market segment criterion in the set of advertisement target market segment criteria," as recited in amended independent claim 18. In fact, it is submitted that Muret is void

of any description of "a set of *advertisement target market segment criteria*," "*target market segment arrays* . . . corresponding to . . .the set of advertisement target market segment criteria," or a payload processor operable to "*generate* a set of target market segment arrays." As such, it is respectfully submitted that Muret fails to anticipate independent claim 18, as amended herein.

For at least the above-cited reasons, it is respectfully submitted that Muret fails to describe each and every element as set forth in amended independent claim 18. Accordingly, Muret fails to anticipate this claim. As such, Applicants respectfully submit that claim 18, as amended, overcomes the 35 U.S.C. § 102(e) rejection thereof. Accordingly, Applicants respectfully request the 35 U.S.C. § 102(e) rejection of claim 18 be withdrawn. Each of dependent claims 19, 20, 24, 25 and 33 depends, either directly or indirectly, from amended independent claim 18 and, accordingly, it is respectfully submitted that these claims are not anticipated by Muret for at least the above-cited reasons. As such, withdrawal of the 35 U.S.C. § 102(e) rejection of these claims is respectfully requested as well. Each of claims 18-20, 24, 25 and 33 is believed to be in condition for allowance and such favorable action is respectfully requested.

Independent claim 34, as amended herein, includes similar recitations as independent claim 18. Thus, for at least the above-cited reasons, it is respectfully submitted that Muret fails to describe each and every element as set forth in amended independent claim 34. Accordingly, Muret fails to anticipate this claim. As such, Applicants respectfully submit that claim 34, as amended, overcomes the 35 U.S.C. § 102(e) rejection thereof. Accordingly, Applicants respectfully request the 35 U.S.C. § 102(e) rejection of claim 34 be withdrawn. Each of dependent claims 35, 36, 40-43 and 49 depends, either directly or indirectly, from amended independent claim 34 and, accordingly, it is respectfully submitted that these claims are not anticipated by Muret for at least the above-cited reasons. As such, withdrawal of the 35 U.S.C. §

102(e) rejection of these claims is respectfully requested as well. Each of claims 34-36, 40-43 and 49 is believed to be in condition for allowance and such favorable action is respectfully requested.

Rejections based on 35 U.S.C. § 103(a)

Title 35 U.S.C. § 103(a) declares that a patent shall not issue when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." The Supreme Court in *Graham v. John Deere* counseled that an obviousness determination is made by identifying the scope and content of the prior art, the level of ordinary skill in the prior art, the differences between the claimed invention and prior art references, and secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

To support a finding of obviousness, the initial burden is on the Office to establish the clear articulation of the reason(s) why the claimed invention would have been obvious. *See* MPEP § 2142. The analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. *See* MPEP § 2143; *See also KSR v. Teleflex*, 127 S. Ct. 1727 (2007). In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *See* MPEP § 2141.02(I).

To reach a proper determination of obviousness, the Examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information, the Examiner must then determine whether the claimed invention "as a whole" would have been

obvious at that time to that person. Knowledge of applicant's disclosure must be put aside in reaching this determination. Impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art. *See* MPEP § 2142.

Claims 10-12, 21-23 and 37-39 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Muret in view of Official Notice. Each of claims 10-12, 21-23 and 37-39 depends, either directly or indirectly, from amended independent claims 1, 18 or 34. As previously set forth, Muret fails to describe each and every element as set forth in these claims. Further, it is respectfully submitted that the matters for which Official Notice has been taken fail to cure the deficiencies set forth above with respect to Muret, nor is Official Notice relied upon for teaching such deficiencies. Accordingly, Applicants respectfully request the 35 U.S.C. § 103(a) rejections of claims 10-12, 21-23 and 37-39 be withdrawn. Each of claims 10-12, 21-23 and 37-39 is believed to be in condition for allowance for at least the above-cited reasons and such favorable action is respectfully requested.

Claims 3-7, 26-30 and 44-48 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Muret in view of Thurston, WO 01/001318 (hereinafter "Thurston"). Each of claims 3-7, 26-30 and 44-48 depends, either directly or indirectly, from one of amended independent claims 1, 18 or 34. As previously set forth, Muret fails to describe each and every element as set forth in these claims. Further, it is respectfully submitted that Thurston fails to cure the deficiencies set forth above with respect to Muret, nor is Thurston relied upon for teaching such deficiencies. Accordingly, Applicants respectfully request the 35 U.S.C. § 103(a) rejections of claims 3-7, 26-30 and 44-48 be withdrawn. Each of claims 3-7, 26-30 and 44-48 is believed to be in condition for allowance for at least the above-cited reasons and such favorable action is respectfully requested.

CONCLUSION

For at least the reasons stated above, claims 1-15 and 18-49 are now believed to be in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-474-6550 or kadsmith@shb.com (such communication via email is herein expressly granted) – to resolve the same. It is believed that no fee is due, however, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112, referencing attorney docket number 193645.01/MFCP.145676.

Respectfully submitted,

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